

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**STATE OF MISSOURI,
APPELLANT**

vs.

**MATTHEW S. ROUCH,
RESPONDENT**

DOCKET NUMBER WD77725 (Consolidated with WD77723)

DATE: DECEMBER 16, 2014

Appeal from:

The Circuit Court of Nodaway County, Missouri
The Honorable Roger M. Prokes, Judge

Appellate Judges:

Special Division: Zel Fischer, Sp.J., Presiding, Joseph M. Ellis, J. and Victor C. Howard, J.

Attorneys:

Robert L. Rice, for Appellant

Robert E. Sundell, for Respondent

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS WESTERN DISTRICT

STATE OF MISSOURI, APPELLANT

v.

MATTHEW S. ROUCH, MISSOURI, RESPONDENT

WD77725

Nodaway County, Missouri

Before Special Division Judges: Zel Fischer, Sp.J., Presiding, Joseph M. Ellis, J. and Victor C. Howard, J.

The State of Missouri brings this interlocutory appeal challenging an order issued in the Circuit Court of Nodaway County granting Matthew Rouch's motion to suppress evidence discovered and seized as a result of the execution of a warrant to search his home. In support of the application for a search warrant, the State had relied upon comments made by Professor Rouch on Facebook to colleagues at Northwest Missouri State University stating, "That's the beginning of the semester. I'm always optimistic. By October, I'll be wanting to get up to the top of the bell tower with a high powered rifle – with a good scope, and probably a gatling gun as well." After being questioned by the police and informing them that his comment was meant as a flippant joke, the following day, Rouch was heard stating, "Yesterday they thought it was a gun. Today I've brought a bomb." While Rouch and those hearing his comments conveyed to the police that they were made jokingly and while a search of Rouch's person and the campus building he was in uncovered no bomb, the police applied for and obtained a warrant to search Rouch's home for "a rifle with a scope, a gatling gun, or other firearms capable of lethal use," which were generically said to be "evidence of a criminal offense." During the search, in an upstairs room, police officers found in plain view marijuana, cultivated marijuana plants, planting materials, and drug paraphernalia. No firearms capable of lethal use were found. Rouch was subsequently charged by information with one class B felony count of Producing a Controlled Substance (Marijuana), § 195.211, and one class C felony count of Possession of a Controlled Substance (Marijuana), § 195.202. The trial court eventually granted Rouch's motion to quash the search warrant and ordered suppressed any evidence discovered and seized as a result of the execution of a warrant to search his home.

AFFIRMED.

Division Two holds:

- (1) Probable cause to issue a search warrant exists only where the affidavit in support of the search warrant establishes that there is a fair probability that contraband or evidence of a crime will be found in the place sought to be

searched. In this case, the warrant complaint and affidavit do not reflect that the firearms to be searched for and seized were either contraband or evidence of a crime. Contrary to the State's assertions, Rouch's possession of firearms inside his home would not have served as evidence that he intended for his comments to be taken seriously rather than in jest so as to support his prosecution for making a terroristic threat, making a false bomb report, harassment by using an electronic communication to frighten another, or assault.

(2) Because it is readily apparent on the face of the warrant and affidavit that the items subject to the warrant were not contraband or evidence of a crime, the trial court properly found that the warrant was so lacking in indicia of probable cause as to render the police officers' belief in its existence entirely unreasonable and that the good faith exception to the exclusionary rule established in *United States v. Leon*, 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984), therefore, did not apply.

Opinion by Joseph M. Ellis, Judge

Date: December 16, 2014

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